

THE INFLUENCE OF INTERNATIONAL HUMAN TRAFFICKING ON UNITED STATES PROSTITUTION LAWS: THE CASE OF EXPUNGEMENT LAWS

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INTRODUCTION

When the issue of human trafficking first gained widespread public attention in the United States in the 1990s, the discussion centered on international human trafficking. In 2000, the United States passed an anti-trafficking law, popularly called the Trafficking Victims Protection Act (TVPA), and the United Nations adopted an anti-trafficking treaty called the Palermo Protocol. Both the TVPA and the Palermo Protocol focused on combating international human trafficking by encouraging countries around the world to pass laws against trafficking and prosecute traffickers. Meanwhile, in the United States, state-level criminal justice systems treated United States citizens qualifying under the federal definition of “human trafficking victim” as criminals by prosecuting them for prostitution. Activists for sexually exploited women and girls in the United States noted the irony that the United States was so concerned about trafficking in other countries, but was neglecting trafficking of its own citizens. The United States was allowing laws and practices in the states that it was condemning in other nations. For example, federal law requires other countries to ensure that victims of trafficking are not inappropriately incarcerated for unlawful acts as a direct result of being trafficked.¹ Yet many states lack laws

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1. 22 U.S.C. § 7106(b)(2) (2006 & Supp. III 2010).

ensuring that sex trafficking victims are not prosecuted for prostitution. As a result, anti-trafficking activists have put pressure on Congress and state legislatures to apply the same legal standards used in an international context to sexually exploited women and girls in the United States. They are leveraging the international human trafficking legal framework to push for legal change to state laws on prostitution.

This essay will begin with an explanation of the legal framework for addressing international human trafficking, including the definitions of trafficking and the laws and policies developed to eradicate human trafficking. Then the essay will describe how this framework has come to influence state laws in the United States, focusing in particular on the recent trend of laws allowing for the expungement of prostitution convictions if the defendant can show that she was a victim of sex trafficking. The essay will conclude by evaluating the effectiveness of this legal framework at both the international and domestic level.

I. LEGAL FRAMEWORK FOR INTERNATIONAL HUMAN TRAFFICKING

In the 1990s, an international coalition of activists opposed to human trafficking pushed for the adoption of a United Nations treaty against trafficking.² In 2000, the United Nations approved the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” otherwise known as the “Palermo Protocol.”³ The Palermo Protocol defines trafficking in persons broadly to include:

recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁴

Exploitation is defined to include prostitution or other forms of sexual exploitation.⁵ Consent of the victim is irrelevant and force, fraud, or coercion is not required if the victim is under eighteen years of age.⁶

2. Melissa Ditmore, *Trafficking in Lives: How Ideology Shapes Policy, in TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS* 107, 111 (Kamala Kempadoo ed., 2005).

3. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 343 [hereinafter Protocol to Prevent, Suppress and Punish Trafficking].

4. *Id.* at 344.

5. *Id.* The Palermo Protocol also prohibits labor trafficking. *Id.*

6. *Id.*

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The treaty focused on prevention, prosecution, and protection, calling on nations to pass laws against trafficking, to prosecute traffickers, to enhance border control, and to provide services to victims of human trafficking.⁷ In Article 9, the protocol called on nations “to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity”⁸ and “to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”⁹ While the latter two clauses addressed societal factors that contribute to the vulnerability of women and children to trafficking, most of the Palermo Protocol focused on criminal justice solutions to trafficking.

The same year, activists in the United States successfully pushed for the passage of the Trafficking Victims Protection Act (TVPA), which had an even broader definition of sex trafficking than the Palermo Protocol. Under the TVPA, sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,”¹⁰ although the operative provisions of the Act applied only to “severe forms of trafficking in persons,”¹¹ which is when “force, fraud, or coercion” is present or when the victim is under the age of eighteen.¹² Coercion is defined as:

- (A) threats of serious harm to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (C) the abuse or threatened abuse of the legal process.¹³

Most of the provisions of the Act apply only to severe forms of trafficking in persons.

At the time of the passage of the TVPA, most discussions in the United States about sex trafficking were focused on the international dimensions of the problem—on trafficking in and between countries other than the United States, particularly countries in Southeast Asia and the newly independent states in Eastern Europe and Asia. The Act

7. Protocol to Prevent, Suppress and Punish Trafficking, *supra* note 3, at 344-45, 348.

8. *Id.* at 347.

9. *Id.*

10. 22 U.S.C. § 7102(9) (2006).

11. *Id.* § 7102(8). The TVPA also prohibits labor trafficking. *Id.*

12. *Id.* § 7102(8)(A).

13. *Id.* § 7102(2).

required the Secretary of State to issue an annual Trafficking in Persons Report (“TIP Report”), which rates any country deemed to be a country of origin, destination, or transit for victims of severe forms of trafficking on whether that country is making appropriate efforts to combat trafficking.¹⁴ The criteria for rating countries are whether countries prohibit and prosecute human trafficking and whether they assist victims, including the prevention of further trafficking and provision of mental and physical health care and shelter.¹⁵ The Secretary of State ranks countries in three tiers: Tier 1 countries are complying with these criteria, Tier 3 countries are out of compliance, and Tier 2 countries are out of compliance but making significant efforts to comply.¹⁶ The Act allows the President to withhold “nonhumanitarian, nontrade-related . . . assistance” to Tier 3 countries.¹⁷ In the 2003 reauthorization of the Act, Congress created a Tier 2 Watch List—countries close to falling to Tier 3.¹⁸ As a result of the TVPA and the Palermo Protocol, countries around the world began to pass anti-trafficking laws.¹⁹ Other international treaties followed, including the Council of Europe Convention on Action Against Trafficking in Human Beings in 2005,²⁰ and international organizations formed to address the issue, such as the Office of the Special Representative and Co-ordinator for Combating the Trafficking in Human Beings, a subdivision of the Organization for Security and Co-operation in Europe.²¹

Like the Palermo Protocol, the TVPA framed the problem of human trafficking as a criminal justice problem that demanded criminal justice solutions.²² In addition to encouraging other nations to prohibit and prosecute trafficking offenses, the Act created the federal crime of human trafficking.²³ The 2003 reauthorization enhanced the penalties

14. 22 U.S.C. § 7107(b)(1), (4)(A), (4)(C).

15. 22 U.S.C. § 2304(h)(1)(B); *see also id.* § 7106.

16. *Id.* § 7107(b)(1).

17. *Id.* § 7107(a).

18. *Id.* § 7107(b)(3)(A)(iii).

19. For a list of countries that have passed trafficking laws, see *International Anti-Trafficking Legislation*, THE PROTECTION PROJECT, <http://www.protectionproject.org/resources/law-library/international-anti-trafficking> (last visited Nov. 17, 2011).

20. Council of Europe: Convention on Action Against Trafficking in Human Beings, May 16, 2005, C.E.T.S. 197, *available at* http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf.

21. *Secretariat—Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings*, ORG. FOR SECURITY & CO-OPERATION IN EUR., <http://www.osce.org/cthb> (last visited Oct. 28, 2011).

22. 22 U.S.C. § 7101(a).

23. *Id.*

for trafficking.²⁴ The 2005 reauthorization provided grants to law enforcement for “programs to investigate and prosecute acts of severe forms of trafficking,” as well as to educate and train law enforcement personnel.²⁵ The TVPA also included provisions related to assisting victims coming out of trafficking.²⁶ For foreign national victims in the United States, the Act allowed them to obtain visas and services if they cooperated with law enforcement in the investigation and prosecution of their traffickers.²⁷ The 2003 and 2005 Acts authorized more than \$200 million and \$300 million, respectively, to be made available as grants to organizations and governments fighting trafficking.²⁸ The 2000 Act had only a brief section on creating economic alternatives to prevent and deter trafficking, including microcredit lending programs, job training, and programs to keep girls in school,²⁹ and it also encouraged programs to increase public awareness and inform potential victims of trafficking about the law and their rights.³⁰

While the Act acknowledged the occurrence of trafficking within the United States, and addressed this by enhancing penalties and providing services for victims in the United States, the bulk of the Act addressed trafficking in foreign countries. Throughout the 2000s, the TIP Report evaluated the efforts to combat trafficking of many countries around the world, but not the United States, the assumption presumably being that the United States did not have a problem with trafficking. Public discussions and awareness focused almost exclusively on trafficking abroad. This began to change in the mid-2000s when the media brought attention to trafficking into the United States from other countries, particularly Mexico. In 2004, *New York Times* journalist Peter Landesman published an article, *The Girls Next Door*, recounting the trafficking of under-aged girls from Mexico to a suburban New Jersey neighborhood where adult men patronized their services at all times of the day.³¹ The explosive reaction to this article

24. *Id.* § 7109.

25. H.R. REP. NO. 109-317, pt. 1, at 9 (2006).

26. 22 U.S.C. § 7105(b)(1)(B).

27. *Id.* § 7105(b)(1)(B), (b)(1)(E)(i)(I).

28. See generally Trafficking Victims Protection Reauthorization Act of 2003, H.R. 2620, 108th Cong. (2003), available at <http://www.state.gov/documents/organization/28225.pdf>; Trafficking Victims Protection Reauthorization Act of 2005, H.R. 972, 109th Cong. (2005), available at <http://www.justice.gov/olp/pdf/tvpa2005.pdf>.

29. 22 U.S.C. § 7104(a).

30. *Id.* § 7104(b).

31. Peter Landesman, *The Girls Next Door*, N.Y. TIMES MAG., Jan. 25, 2004, at 32. The article was the basis for the Hollywood movie, *Trade*. TRADE (Roadside Attractions 2007), available at <http://tradethemovie.com/synopsis.html>.

contributed to an increased awareness that trafficking was a problem not only in foreign countries, but in the United States as well. Activists within the United States spoke out about the trafficking of United States citizens, especially prostituted children, and they articulated their concerns using the linguistic and legal framework of the international trafficking discourse: they argued that prostituted children were victims of a severe form of trafficking and that the state should protect them rather than prosecute them.

As a result of this activism, domestic trafficking of United States citizens was addressed for the first time in the 2005 reauthorization of the TVPA.³² In this law, Congress acknowledged that “United States efforts to combat trafficking [had] focused primarily on . . . international trafficking [of] persons, including the trafficking of foreign citizens into the United States,” but not on the trafficking of United States citizens.³³ In its findings, the Act stated that people are trafficked within United States borders and that many minors are vulnerable to commercial sexual exploitation.³⁴ The Act authorized new programs to serve United States citizen victims of domestic trafficking, including a pilot program for sheltering minors.³⁵ The 2008 reauthorization of the TVPA expanded social service assistance to United States citizens who were trafficked.³⁶ Despite this recognition that trafficking happens within its own borders, the United States did not evaluate its own progress in combating trafficking in the TIP Report until 2010.³⁷

Whereas international anti-trafficking laws by the mid-2000s were reframing prostituted women as victims and Congress had recognized that United States’ citizens were being trafficked, states had done little at that point to acknowledge, in law or practice, that people in prostitution were often there by “force, fraud or coercion” or were under eighteen. Activists working with sexually exploited women and girls pointed out that the United States, while so concerned with the sexual exploitation of women and girls in foreign countries, was doing little to encourage states to help United States citizens trafficked within its own borders. Activists called attention to United States citizens who were being trafficked, particularly the commercial sexual exploitation of

32. H.R. REP. NO. 109-317, pt. 2, at 18 (2005).

33. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 2(3)-(5), 119 Stat. 3558, 3558-59 (2006) (codified as amended at 22 U.S.C. § 7101 (2006)). *See also* H.R. REP. NO. 109-317, pt. 2, at 18.

34. Trafficking Victims Protection Reauthorization Act of 2005 § 2(4)-(6).

35. *Id.* § 203(a), (b).

36. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 213, 122 Stat. 5044, 5064 (2008).

37. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 338-40 (10th ed. 2010).

under-aged girls, who under both the Palermo Protocol and the TVPA qualified as trafficking victims. Rachel Lloyd of Girls Educational and Mentoring Services (GEMS) in New York City, for example, testified before Congress in 2010:

As a nation, we've graded and rated other countries on how they address trafficking within their borders and yet have effectively ignored the sale of our own children within our own borders Katya from the Ukraine will be seen as a real victim and provided with services and support, but Keshia from the Bronx will be seen as a "willing participant", someone who's out there because she "likes it" and who is criminalized and thrown in detention or jail.³⁸

Lloyd noted, in particular, the irony of prosecuting a girl for prostitution when statutory rape law presumed girls her age were unable to consent to sex. Activists began to call the commercial sexual exploitation of minors in the United States "domestic minor sex trafficking" and they pushed for legal changes.³⁹

II. STATE-LEVEL ANTI-TRAFFICKING LAWS IN THE UNITED STATES

Anti-trafficking organizations are pushing for legal changes that mirror changes that happened in federal and international trafficking law. Polaris Project, a United States-based anti-trafficking service, research, and advocacy organization in Washington, D.C.,⁴⁰ rates each state in ten categories of law it believes are crucial to a "comprehensive anti-trafficking legal framework," including vacating convictions for sex trafficking victims.⁴¹ Similarly, the anti-trafficking advocacy

38. *In Our Own Backyard: Child Prostitution and Sex Trafficking in the United States: Hearing Before the Subcomm. on Human Rights & the Law and the S. Judiciary Comm.*, 111th Cong. (2010) (statement of Rachel Lloyd, Executive Director & Founder, Girls Educational & Mentoring Services); see also *GEMS Testimonies at Senate Hearing February 24, 2010*, YOUTUBE, <http://www.youtube.com/watch?v=8HBo9vREVBQ> (last visited Nov. 8, 2011) (statement of Rachel Lloyd).

39. SHARED HOPE INT'L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S PROSTITUTED CHILDREN 9 (2009), available at http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009%28without_cover%29.pdf.

40. See generally *Introduction*, POLARIS PROJECT, <http://www.polarisproject.org/about-us/introduction/mission-and-values> (last visited Oct. 28, 2011).

41. *Rated State Laws*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/state-policy/current-laws> (last updated Aug. 2011) (stating the ten categories are: "(1) Sex trafficking, (2) Labor trafficking, (3) (a) Asset forfeiture and/or (b) Investigative tools, (4) (a) Training on human trafficking and/or (4) Human trafficking task force, commission, or advisory committee, (5) Posting of a human trafficking hotline, (6) Safe harbor; protecting sex trafficked minors, (7) Lower burden of proof for sex trafficking of minors, (8) Victim assistance, (9) Access to civil damages, and (10) Vacating convictions for sex trafficking victims").

group, Shared Hope International, issued a TIP-like report on the states, evaluating each state on whether it complied with its “[l]egislative [f]ramework,” which includes: criminalizing domestic minor sex trafficking; criminalizing the demand, the traffickers, and the facilitators; providing protection for child victims; and enhancing law enforcement and criminal justice tools to aid in investigations and prosecutions.⁴² These efforts and others have led to reforms of state prostitution laws. Many states have passed laws on sex trafficking.⁴³ These laws prohibit sex trafficking, enhance penalties, allow for asset forfeiture, provide training and enhanced investigative tools to law enforcement, create state-level task forces on trafficking, create human trafficking hotlines, prohibit the prosecution of minors who are trafficked, lower the burden of proof for sex trafficking of minors, provide victim assistance, allow victims to sue traffickers for civil damages, and vacate convictions for sex trafficking victims.⁴⁴

One response to the acknowledgement of widespread commercial sexual exploitation of minors is the push for what are called “safe harbor act” laws, which divert minors picked up for prostitution away from criminal prosecution and into social services.⁴⁵ In many states, sexually exploited minors are arrested, charged, and convicted for prostitution or related offenses.⁴⁶ Safe harbor act laws explicitly decriminalize prostituted minors and direct police instead to place these youths in social services. In 2008, New York passed the country’s first safe harbor act law,⁴⁷ which resulted in part from the efforts of activists

42. SHARED HOPE INT’L, PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK: METHODOLOGY 5, 16 (2010), *available at* <http://www.sharedhope.org/Portals/0/Documents/ProtectedInnocenceMethodologyFINAL.pdf>; *see also State Initiatives*, SHARED HOPE INT’L, <http://www.sharedhope.org/WhatWeDo/BringJustice/PolicyRecommendations/State.aspx> (last visited Oct. 28, 2011).

43. *See, e.g., Rated State Laws*, *supra* note 41 (The Polaris Project maintains updated information about state anti-sex trafficking laws on their website.); *Pending State Legislation*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/state-policy/pending-legislation> (last visited Oct. 28, 2011) (listing pending legislation).

44. *See generally Rated State Laws*, *supra* note 41.

45. Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1070-74, 1077-78 (2011) (noting that “the United States has [dedicated] significant resources toward fighting the international trafficking of children[,]” but “has taken limited steps to address the commercial sexual exploitation of children domestically”). *See generally* Carrie Baker, *Jailing Girls for Men’s Crimes*, MS. MAG., Summer 2010, at 27.

46. Birckhead, *supra* note 45, at 1062.

47. Safe Harbour for Exploited Children Act, N.Y. SOC. SERV. LAW §§ 447-a, 447-b (McKinney 2010).

affiliated with GEMS, a shelter and counseling program that helps girls escape commercial sexual exploitation and rebuild their lives. GEMS's founder, Rachel Lloyd, and survivors of commercial sexual exploitation who now work with the organization testified for the law before the New York legislature.⁴⁸ Washington, Illinois, Connecticut, Minnesota, and Massachusetts have also passed safe harbor act laws,⁴⁹ and several more states are currently considering them, including Florida, Hawaii, Mississippi, New Jersey, Ohio, Oregon, and Tennessee.⁵⁰ These laws vary as to the age threshold for diversion (for example, under eighteen in New York and Illinois but under sixteen in Connecticut), whether they apply only to first time offenders (New York) or to repeat offenders as well (Illinois), and how they process minors.⁵¹ In Texas, the state Supreme Court in 2010 reversed the conviction of a thirteen-year-old girl for prostitution stating that “[c]hildren are the victims, not the perpetrators, of child prostitution.”⁵² Congress is now considering the Domestic Minor Sex Trafficking Deterrence and Victims Support Act, which requires that states treat under-aged victims of sex trafficking as crime victims rather than as criminal defendants.⁵³ These laws have resulted from the influence of legal frameworks developed to address international human trafficking.

These frameworks have also led to the passage of state-level expungement laws. Whereas safe harbor laws prevent prosecution of minors picked up for prostitution, expungement laws allow for people convicted of prostitution to clear their records if they can show that they were victims of sex trafficking. Anti-trafficking advocates have pushed for expungement laws for trafficking victims. For example, the Minnesota Advocates for Human Rights issued a report in 2008 stating that general expungement laws were difficult for sex trafficking victims to use.⁵⁴ The report recommended that prosecutors and judges help

48. RACHEL LLOYD, *GIRLS LIKE US* 237-254 (2011).

49. WASH. REV. CODE ANN. § 13.32A.030 (West 2011); The Abused and Neglected Child Reporting Act, H.B. 6462, 96th Gen. Assemb., Reg. Sess. (Ill. 2010) (to be codified at 720 ILL. COMP. STAT. 5/11-14); CONN. GEN. STAT. ANN. § 53a-82 (West Supp. 2011); MINN. STAT. ANN. § 260C.007(6)(11) (West Supp. 2011); MASS. GEN. LAWS ch. 6 § 178 (2010). In 2002, Michigan defined prostitution to apply only to people sixteen years of age or older. MICH. COMP. LAWS § 750.448 (2004).

50. *Pending State Legislation, supra* note 43.

51. N.Y. SOC. SERV. LAW §§ 447-a, 447-b; 720 ILL. COMP. STAT. 5/11-14(d); CONN. GEN. STAT. ANN. § 53a-82 (West Supp. 2011).

52. *In re B.W.*, 313 S.W.3d 818, 826 (Tex. 2010).

53. Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2011, S. 596, 112th Cong. § 6(3) (2011).

54. THE ADVOCATES FOR HUMAN RIGHTS, ET AL., *SEX TRAFFICKING NEEDS ASSESSMENT FOR THE STATE OF MINNESOTA* 137-40 (rev. ed. Oct. 2008), *available at*

victims navigate these laws, the legislature consider broadening the state expungement law to include misdemeanor prostitution charges, and the legislature also allocate funds to establish free legal clinics to assist trafficking victims with the expungement process.⁵⁵ Groups like Polaris Project and Change.org have also pushed states to pass expungement laws.⁵⁶

As a result of this activism, several states, including New York, Illinois, and Nevada, have passed expungement laws, which allow courts to vacate prostitution convictions of sex trafficking victims.⁵⁷ In passing its law, the New York legislature acknowledged that prostitution convictions mean those convicted are “blocked from decent jobs and other prospects for rebuilding their lives.”⁵⁸ The intent of the New York legislature was to “give victims of human trafficking a desperately needed second chance they deserve” by clearing their records.⁵⁹ While the New York law does not specify what kind of evidence defendants must produce to show they were sex trafficking victims, the Illinois law provides that defendants can vacate prostitution records if they can prove they were trafficking victims at the time of the offense by evidence such as court records, law enforcement certifications, or a “sworn statement from a trained professional staff of a victims services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.”⁶⁰ Several other states are currently considering expungement laws, including California, Hawaii, Maryland, New Jersey, Pennsylvania, Texas, Vermont, and Virginia.⁶¹ Some states are also passing affirmative defense laws, which protect adult victims of sex trafficking

http://www.theadvocatesforhumanrights.org/uploads/report_final.10.13.08.pdf.

55. *Id.* at 141, 156.

56. See Amanda Kloer, *Will Nevada Legislature Pass Critical Anti-Trafficking Laws?*, CHANGE.ORG (Feb. 3, 2011), <http://news.change.org/stories/will-nevada-legislature-pass-critical-anti-trafficking-laws>; *Take Action to End Human Trafficking in Nevada*, CHANGE.ORG (May 13, 2011), <http://www.change.org/petitions/take-action-to-end-human-trafficking-in-nevada>.

57. See, e.g., N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney Supp. 2011); Assemb. B. 6, 76th Gen. Assemb., Reg. Sess. (Nev. 2010) (to be codified as amended at NEV. REV. STAT. § 176.515(5)), available at http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB6_R1.pdf; S.B. 1037, 97th Gen. Assemb., Reg. Sess. (Ill. 2011) (to be codified at 725 ILL. COMP. STAT. 5/116-2.1).

58. Assemb. B. Memo 7670, 2009 Leg., Reg. Sess. (N.Y. 2009), available at http://assembly.state.ny.us/leg/?default_fld=&bn=A07670&term=2009&Memo=Y.

59. *Id.*

60. S.B. 1037, 97th Gen. Assemb., Reg. Sess.

61. *Pending State Legislation, supra* note 43.

from prostitution convictions.⁶² These laws provide an affirmative defense to prostitution charges if a defendant can show she was coerced by pimps, johns, and traffickers. These laws treat prostituted women as victims rather than as criminals. In fact, many women in prostitution are coerced, by violence or by circumstances that constrain their choice of whether to participate.⁶³ By reflecting this reality in the law, affirmative defense and expungement laws allow women to rebuild their lives by gaining access to employment and housing. Expungement laws and, especially, affirmative defense laws, bring these states into compliance with federal and international legal standards in this regard.⁶⁴

CONCLUSION

Activists for sexually exploited women and girls have leveraged the legal framework developed to address international human trafficking to advocate for better legal treatment of prostituted women and girls in the United States, people who were historically blamed for their situations, arrested, and convicted. States are beginning to pass laws that treat these women and girls as victims, not criminals. One may ask, however, whether these new laws are likely to be effective in reducing the incidence of human trafficking. While these laws are necessary and important steps, criminal justice solutions alone are unlikely to stop sex trafficking. The criminal justice framing of the causes and solutions to sex trafficking ignores systemic factors that make women and girls vulnerable to trafficking, such as the lack of viable employment opportunities for women and high poverty rates in the United States, especially among women and girls of color.⁶⁵ The

62. Affirmative defense bills have been introduced in Nevada, Pennsylvania, Virginia, and New Jersey. *Id.* Georgia recently passed a law providing that “[a] person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude” GA. CODE ANN. § 16-3-6(b) (2011).

63. See Jody Raphael & Deborah L. Shapiro, *Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago*, CENTER FOR IMPACT RES. 18-19, 20 (Aug. 2002), <http://www.impactresearch.org/documents/sisterspeakout.pdf>.

64. See Trafficking Victims Protection, 22 U.S.C. § 7106(b)(2) (2006 Supp. III 2010). See also Moira Heiges, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 439-42, 446-48 (2009) (explaining tensions between federal trafficking law and state prostitution laws).

65. Thirty-five percent of Hispanic children and thirty-nine percent of black children lived in poverty in the United States in 2010. *Children in Poverty*, CHILD TRENDS DATABANK, <http://childtrendsdatabank.org/?q=node/221> (last updated Sept. 2011). Black women have a poverty rate of 25.6%. *Analysis of New 2010 Census Poverty Data*, NAT’L WOMEN’S L. CENTER, <http://www.nwlc.org/analysis-new-2010-census-poverty-data->

lack of economic opportunities for those in poverty in the United States means that many women and girls will remain vulnerable to sex trafficking.

Both the TVPA and the Palermo Protocol call on nations to prevent trafficking by addressing social conditions,⁶⁶ but in fact, criminal justice approaches are predominant in international, federal, and state efforts to combat trafficking. Governments prohibit human trafficking, prosecute individual traffickers, and provide funds for social services to help individual victims. They have not, however, addressed the structural factors like economic inequality that create vulnerable populations upon whom traffickers prey. Therefore, these anti-trafficking laws seem unlikely to significantly decrease sex trafficking in the United States. Nevertheless, the United States' concern with international trafficking and the development of legal frameworks to combat international trafficking has led to awareness of domestic trafficking and to some state-level reforms of prostitution laws that are important first steps in combating domestic sex trafficking.

%E2%80%93september-2011 (last updated Sept. 22, 2011).

66. Protocol to Prevent, Suppress and Punish Trafficking, *supra* note 3, at 347; 22 U.S.C. § 7104(a) (2006).